

BPS-186

March 17, 2005

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**C.A. No. 04-2692

UNITED STATES OF AMERICA

VS.

WILLIAM FRAZIER

(D.DEL. CRIM. NO. 99-CR-00007)

Present: RENDELL, FISHER and VAN ANTWERPEN, CIRCUIT JUDGES

Submitted are:

- (1) Appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- (2) Appellee's response

in the above-captioned case.

Respectfully,

Clerk

MMW/KCW/nf/ch

ORDER

The foregoing request for a certificate of appealability is denied, as Appellant has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Jurists of reason could not debate the District Court's resolution of Appellant's § 2255 motion, as expressed in the thorough analysis set forth in the District Court's memorandum opinion, because Appellant's claims are either meritless or procedurally barred. See *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). United States v. Booker, — U.S. —, 125 S. Ct. 738 (2005), is not retroactively applicable to cases on collateral review. Cf. United States v. Jenkins, 333 F.3d 151 (3d Cir. 2003) (holding that *Apprendi* is not retroactively applicable to cases on collateral review). See also Humphress v. United States, — F.3d —, 2005 WL 433191, at \*4 (6th Cir. Feb. 25, 2005) (holding that *Booker* is not retroactively applicable to cases on collateral review); *Varela v. United States*, — F.3d —, 2005 WL 367095, at \*3 (11th Cir. Feb. 17, 2005) (same); *McReynolds v. United States*, — F.3d —, 2005 WL 237642, at \*1 (7th Cir. Feb. 2, 2005) (same).

By the Court,

*/s/ D. Michael Fisher*  
Circuit Judge



Marcia M. Waldron

Dated: April 26, 2005

Marcia M. Waldron, Clerk